

Exhibit C

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
Case No.: 20-10343 (LSS)
BOY SCOUTS OF AMERICA AND
DELAWARE BSA, LLC, (Jointly Administered)
Debtors.
OFFICIAL TORT CLAIMANTS'
COMMITTEE OF BOY SCOUTS OF
AMERICA AND DELAWARE BSA, LLC, Adversary Proceeding No.:
21-50032 (LSS)
Plaintiff,
v.
BOY SCOUTS OF AMERICA AND
DELAWARE BSA, LLC, Courtroom 2
A.A., et al., 824 Market Street
Wilmington, Delaware 19801
Defendants. Thursday, August 19, 2021
3:00 p.m.

TRANSCRIPT OF ZOOM HEARING
BEFORE THE HONORABLE LAURIE S. SILVERSTEIN
CHIEF UNITED STATES BANKRUPTCY JUDGE

(APPEARANCES CONTINUED)

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Possession:

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1 (Proceedings commenced at 3:00 p.m.)

2 THE COURT: Good afternoon, counsel. This
3 is Judge Silverstein. We're here in the Boy Scouts of
4 America bankruptcy case, case number 20-10343. Thank you for
5 gathering on short notice. I am going to read my decision
6 from the bench. I will say if I had more time, it would
7 probably be more concise, so I
8 apologize in advance for the length.

9 Boy Scouts of America is a not-for-profit
10 organization whose mission is to train youth in responsible
11 citizenship, character development, and self-reliance through
12 participation in a wide variety of outdoor and educational
13 activities.

14 Notwithstanding its mission, pre-petition, Debtors
15 were defendants in numerous lawsuits relating to sexual abuse
16 in scouting programs. Debtors filed these cases because of
17 the abuse claims with two objectives in mind: Equitable
18 compensation of victims of abuse in Scouting and maintaining
19 Scouting's mission.

20 At that time, Debtors were aware of
21 approximately 1,700 asserted abuse claims. There were over
22 80,000 nonduplicative proofs of claim filed in these cases.
23 Debtors had hoped to proceed expeditiously through a
24 bankruptcy proceeding. Unfortunately, this is Month 18 of
25 the bankruptcy case.

1 Before me is Debtor's motion for permission to
2 enter into a restructuring support agreement as it has been
3 amended with the Official Tort Claimants Committee, the self-
4 named Coalition of Abused Scouts for Justice, the Future
5 Claimants Representative, and an ad hoc committee of Local
6 Councils. The RSA has also been signed by numerous
7 consenting State councils. The Debtors hope further
8 consenting State Council will sign on.

9 Broadly speaking, the RSA requires Debtors
10 to pursue a plan of reorganization that conforms to a term
11 fee attached to the RSA. As for Debtors, the RSA and/or term
12 sheet provide for a \$250 million contribution to a trust for
13 holders of direct and indirect abuse claims under a plan.

14 The RSA also requires that the plan pursued by
15 Debtors contain various findings and orders, including
16 certain findings blessing trust distribution procedures and
17 values established by them, insurance assignment, and other
18 insurance-related provisions and good-faith findings.

19 As for the ad hoc committee of Local Councils, it
20 is required to use its reasonable efforts to persuade all
21 Local Councils chartered by Boy Scouts to contribute in the
22 aggregate 600 million, consisting of cash, property, and an
23 interest-bearing variable payment note issued by a Delaware
24 statutory trust.

25 As for the State Court counsel, they are to use

1 their respective reasonable efforts to advise and recommend
2 to their clients, the holders of direct abuse claims, that
3 they accept the plan reflected in the term fee. They are
4 also to provide information to council to who are not parties
5 to the RSA so that those other parties can make meaningful
6 and informed voting decisions on the plan.

7 As for the TCC Coalition, FCR, and State Court
8 counsel, they are to cooperate in good faith with Debtors in
9 connection with the plan and agree to support and/or seek as
10 appropriate stays of certain motions currently pending before
11 the Court, including the estimation motion and the restricted
12 assets adversary.

13 The RSA and/or term sheet contain certain outs or
14 termination events. A key event is the ability of each party
15 to terminate the RSA if any protocol for addressing chartered
16 organizations is not satisfactory to it. The term sheet also
17 requires that any settlements with a chartered organization
18 or an insurance company have unanimous approval.

19 No chartered organizations or insurance companies
20 are currently parties to the RSA. While not signatories to
21 the RSA, JPMorgan, Debtor secured creditor, and the
22 creditors' committee support the RSA. Importantly, Debtors
23 have a fiduciary out.

24 In addition to those provisions, which I will call
25 somewhat typical, there are three additional provisions of

1 the RSA and/or proposed form of order that were the subject
2 of much discussion during the argument. First, the RSA
3 requires a finding in the RSA approval order that the RSA
4 parties have been engaged in extensive good-faith, arm's-
5 length negotiations and Court-ordered mediation regarding the
6 terms of the plan.

7 I question whether I could make such a finding
8 given the scope of the RSA hearing and relevant standards. I
9 also questioned what a finding of good faith means in this
10 context. During the hearing, the RSA parties withdrew the
11 request for a good-faith finding, so that is no longer an
12 issue.

13 Second, the RSA provides for the payment of the
14 fees of coalition professionals. As will be discussed, I am
15 not approving that at this time.

16 Third, the RSA provides that the RSA approval
17 order contain a finding and conclusion that, "Debtors have
18 no obligation to seek approval of and have no obligations
19 under the Hartford Settlement." I cannot make the finding
20 and conclusion requested. As I'll discuss, the clear import
21 of these findings is that Hartford has no damages, and I
22 cannot, and as importantly, should not, make that
23 determination at this time in this context.

24 Approximately, 50 objections, reservation of
25 rights, or joinders to objections have been filed by a

1 variety of parties, including insurers, chartered
2 organizations, and groups of individuals holding direct abuse
3 claims. I've reviewed the filings and the exhibits, and this
4 is my decision.

5 Starting with the Debtor's business judgment. The
6 motion was brought under Section 363 of the Bankruptcy Code,
7 and I find that Debtors have met the relevant standard. The
8 business judgment standard applies to a review of the Board's
9 consideration of a transaction unless the objecting party can
10 establish by competent evidence facts to support a heightened
11 standard. I cite to In re: LATAM Airlines Group SA, 620 B.R.
12 722 out of the Bankruptcy Court in the Southern District of
13 New York in 2020, which holds that transactions with insiders
14 are by definition subject to a heightened standard.

15 And for the Delaware State Law standard, which is
16 informative, I cite to Shabbouei v Laurent, a Chancery Court
17 decision, 2020, Delaware Chancery Lexis 121, April 2nd, 2020,
18 which in turn cites to Aronson v Lewis, 473, A.2d 805 out of
19 the Delaware Supreme Court in 1984. These cases hold that
20 transactions are subject to a heightened scrutiny where a
21 majority of the board is interested in the challenged
22 decision, or the decision was not a product of valid business
23 judgment.

24 Here, Century and the Certain Insurers contend
25 that the BSA Board was conflicted. The Certain Insurers

1 contend that, "The Local Councils had complete and total
2 control over the Debtor's corporate governance electing the
3 representatives" and that these representatives were the ones
4 who evaluated and approved the RSA. The Certain Insurers
5 also contend that heightened scrutiny is necessary because
6 the Debtor's directors and officers failed to familiarize
7 themselves with the RSA.

8 Century identifies the self-interested provisions
9 of the RSA to be that each member of the National Executive
10 Council and Debtors Board benefits from the third-party
11 releases granted to the Local Councils with which they are
12 affiliated and are protected parties. And second, the
13 controlling Local Councils themselves benefit from the
14 third-party releases as do their own respective officers and
15 directors.

16 While pointing to the releases to support a
17 conflict, the provisions of the RSA that both Century and
18 Certain Insurers focus on are the purported lack of insurance
19 neutrality, the provisions of the TDPs, and the lack of any
20 settlements with Chartered Organizations.

21 The National Executive Board of the BSA is
22 comprised of 72 members, an unusually large board. The
23 members of the National Executive Board are selected by the
24 National Council, which is comprised of 1,200 individuals,
25 many nominated by Local Councils. Those 1,200 members

1 include the 72 board members themselves, the President and
2 Council Commissioner for each of the 251 Local Council, slots
3 based on youth members in each council, and various
4 volunteers.

5 As for responsibilities, the National Executive
6 Board delegated responsibility for managing the affairs of
7 the Boy Scouts of America to the Executive Committee with a
8 few exceptions, one of which is the incurrence of debt which
9 was reserved to the Board. The Executive Committee is made
10 up of 12 individuals who are all Board members. As of May
11 2020, no member of the Executive Committee was permitted to
12 simultaneously serve on a Local Council Executive Board.

13 The National Executive Committee formed a
14 Bankruptcy Task Force in July 2020. Mr. Desai is one the
15 five members of the Bankruptcy Task Board and is also a
16 member of the National Executive Committee and the National
17 Executive Board. The Bankruptcy Task Force was created to
18 assist the Executive Committee in their governance
19 responsibilities by working with BSA General Counsel and
20 monitoring the progress of the bankruptcy case, helping to
21 the keep the Executive Committee informed so it could perform
22 its governance role.

23 Mr. Desai testified that Debtors were aware of
24 potential conflicts with the Local Councils as it relates to
25 the BSA bankruptcy and so took steps to avoid them. On

1 February 7, 2021, the National Executive Board met with their
2 advisors to discuss this issue. After that meeting, each
3 Board member was asked to resign from his or her Local
4 Council or recuse him or herself from decisions that may
5 impact Local Councils.

6 Mr. Desai testified that he is not aware of any
7 Board member that served on a Local Council who voted on
8 merits at issue in the RSA. The insurers argue that because
9 the National Council elect the 72 members of the Board, the
10 directors are conflicted.

11 But Delaware law has long held that a director is
12 not interested simply because he was voted or selected by
13 a particular faction.

14 As for overlapping membership on the National
15 Executive Board and a Local Council Board, the evidence is
16 that directors had to resign from Local Council Boards or
17 recuse themselves from decisions where there may be
18 adversity. There are no overlapping roles at the Executive
19 Committee or Bankruptcy Task Force levels. Certain Insurers
20 also point to the longstanding relationships between Board
21 members and Local Councils. They asked me to draw the
22 commonsense conclusion from the relationships that BSA
23 directors must be interested. I understand the argument and
24 have considered it. Financial incentives may not be the
25 appropriate consideration here. I am persuaded, however,

1 that the Board took appropriate precautions and reminded
2 Members of the need to recuse themselves as necessary.

3 But even if Board members are conflicted,
4 and I did not conclude that, I do not find that the Boy
5 Scouts and the Local Councils are actually adverse to each
6 other with respect to the RSA. The Boy Scouts of America and
7 the Ad Hoc Committee of Local Councils are two of five
8 parties to the RSA.

9 The third party releases in favor of the Local
10 Councils that are the focus of the disinterestedness argument
11 were not negotiated by Boy Scouts of America. Rather, the
12 third-party releases and the \$600 million Local Council
13 contribution were negotiated between the Ad Hoc Committee of
14 Local Councils and the Plaintiff's representatives, namely
15 the Tort Claimants Committee, the FCR, and the Coalition.

16 In other words, those providing the releases
17 negotiated the terms, so I do not see Boy Scouts on both
18 sides of this aspect of the transaction. What happened here
19 was exactly what should happen. The parties with the alleged
20 liabilities each negotiated their own contribution.

21 As for any releases being granted by the Boy
22 Scouts to the Local Councils, which no one really raised
23 except in argument, there the Boy Scouts and Local Councils
24 would be adverse, but again, what happened was exactly what
25 should happen. The fiduciaries of the estate, the TCC, and

1 FCR either negotiated the transaction or are presently
2 supporting the resolution.

3 Finally, on this front, the question of whether
4 the Board was conflicted in the RSA transaction is
5 interesting because ultimately, the third-party releases and
6 any other benefits that Local Councils may receive will be
7 tested in the plan context. As discussed during argument,
8 Debtors can file the plan contemplated by the RSA whether I
9 approve the RSA or not. If the plan is proposed, then, the
10 third-party releases will be tested by the applicable
11 standard.

12 Judge Garrity's decision in LATAM Airlines
13 is informative in how it contrasts to the scenario before me.
14 That case is distinguishable in at least three respects.

15 First, the order presented to the Court was not an
16 interlocutory order, as is the order before me. Judge Garrity
17 was asked to approve the terms of a DIP facility. In
18 contrast, any order I would enter on the RSA does not approve
19 any term of the plan embodied in the term sheet or speak to
20 any confirmation standard.

21 Second, as I've already discussed, I do not see
22 insiders on both sides of the transaction. Third, the
23 objectors in LATAM Airlines objected to the portions of the
24 DIP facility that favored the insiders, that is the third
25 tranche of the DIP. They did not use the existence of a

1 conflict with the insiders to object to a tranche of the DIP
2 not funded by the insiders.

3 Here, to my recollection, at no point in this case
4 had the insurers objected to third-party releases, Debtor
5 releases, or the Local Council contribution. Rather, the
6 insurers' objections throughout the entire BSA case,
7 including here, have been consistent. The insurers contend
8 that the plan cannot be confirmed because it is not
9 insurance- neutral. As stated in Century's objection, the
10 plan is, "Affirmatively insurance prejudicial." Further, the
11 insurers contend that Debtors have conceded control of the
12 TDPs to the Abuse Survivors Representatives and have
13 abdicated their obligation under the insurance policies to
14 cooperate with insurers.

15 A recently added objection that Debtors have not
16 yet brought the chartered organizations into the mix is, in
17 essence support for yet further third-party releases. None
18 of these objections go to any provision of the RSA or term
19 sheet that purportedly improperly favor Local Councils.

20 While I'm not going to go through Judge Chapman's
21 decision in In re Innkeepers USA Trust, 442 B.R. 227, out of
22 the Bankruptcy Southern District New York 2010, it is highly
23 distinguishable, including that Debtors sought approval of
24 the RSA at an early stage of the case, the RSA was one -- was
25 with one creditor, it precluded Debtor from shopping the

1 company, Debtor had not canvassed any alternatives, and
2 Debtor did not have an effective fiduciary out.

3 This case is not in its infancy. Debtors have
4 negotiated with the Unsecured Creditors Committee and
5 JPMorgan. The RSA is signed by State Court counsel who have
6 represented to the Court that they represent in excess, I
7 think, of 70,000 claimants, but I know it's at least 60,000
8 claimants, and Debtors have a fiduciary out.

9 The insurer's second argument for a higher
10 standard is that Debtors have failed to inform themselves.
11 The clear evidence is to the contrary. While the Board's
12 process may not have been perfect, there is no question the
13 Bankruptcy Task Force, which was tasked with all things
14 bankruptcy, was informed. The Bankruptcy Task Force kept the
15 National Executive Committee informed, and the Board was
16 informed by both.

17 Mr. Desai, who was a very credible witness,
18 testified that the National Executive Board, the National
19 Executive Committee, and the Bankruptcy Task Force met a
20 combined total of 57 times over a seven- month period. At
21 all levels, Debtors had the advice of their respective
22 professionals, and they received several presentations.
23 Directors were engaged.

24 Topics included the Chapter 11 cases, the progress
25 of the mediation, including which groups had and had not yet

1 been a focal point in the mediation, the BSA contribution,
2 the effect of the BSA contribution, and the DST note on Boy
3 Scouts go-forward operations, and the impact of the JPM debt.

4 There were discussions of plan options, including
5 a discussion of the pros and cons of dropping the toggle plan
6 and having a deal with the coalition, the TCC, and FCR, and
7 whether these groups would be able to resolve concerns over
8 the Hartford deal.

9 And there was discussion of Boy Scouts'
10 relationship with the Local Councils and some discussion of
11 chartered organizations. Minutes also reflect the term
12 sheets were circulated.

13 Insurers focus most on the fact that Mr. Ownby,
14 chair of the Board, testified that he didn't review the RSA
15 before it was signed, and Mr. Mosby, president and chief
16 executive officer, was not involved in discussions around the
17 TDPs. Mr. Ownby also testified that the Board had
18 discussions about the major elements of the RSA, the Board
19 had been presented with numerous documents since the filing
20 of the bankruptcy case leading up to the signing of the RSA,
21 and the Boy Scouts had advisors with respect to claim
22 procedures.

23 Mr. Desai and the Bankruptcy Task Force had the
24 RSA and the TDPs. And the Board gave Mr. Mosby permission to
25 move forward with the RSA under certain parameters, including

1 providing a mechanism for reaching out to chartered
2 organizations. Also, Mr. Mosby testified in his deposition
3 succinctly but comprehensively as to why he thinks the RSA is
4 the best path forward for Boy Scouts and that this is a step
5 toward a global resolution.

6 Insurers also focus on the fact that Debtors did
7 not receive or review any invoices from coalition
8 professionals. Mr. Whitman testified he based his advice on
9 the coalition's fees, on his experience as a professional in
10 the bankruptcy arena, and the fees of other professionals in
11 the case.

12 Others assert that there was little consideration
13 of the chartered organizations and the loss of membership on
14 the BSA going forward. Many of the objectors attacked the
15 plan as not confirmable.

16 The RSA as illusory. But there is no -- as
17 illusory because there is no signature of actual creditors,
18 and the RSA -- let me start this over.

19 Others assert that there was little consideration
20 of the charted organization and the loss of membership on the
21 BSA going forward. Many of the objectors attacked the plan
22 as not confirmable, the RSA as illusory because there is no
23 signature of actual creditors, and that the BS -- and that
24 the RSA is the wrong way to build consensus. Finally,
25 objectors point to a lack of a board resolution or one board

1 resolution approving the entire RSA.

2 Having reviewed the evidence, I conclude that
3 Debtors were sufficiently informed to make this decision.
4 And while a specific resolution would have been preferable,
5 the evidence is clear that Debtors approved the transaction.
6 Because I make these conclusions, I also conclude that
7 objectors have met their burden to show the entirety -- have
8 not met their burden to show the entirety fair standard
9 applies. In turn, this leads to the conclusion that Debtors
10 have met their burden under Section 363.

11 Debtors want me to approve an RSA, which they
12 believe is the best path forward to build consensus with as
13 many non-RSA parties as possible. While the signatories are
14 not creditors, the RSA parties have obligations to use their
15 reasonable efforts to achieve their obligations under the
16 RSA. Objectors disagree with Debtors assessment, contending
17 that the RSA will hinder further resolutions.

18 As I said in argument, a Court is particularly
19 ill-suited to address strategic business decisions such as
20 this one. Debtors may ultimately be wrong in their
21 assessment, but that is not the test of business judgment.
22 While in the words of Ms. Lauria, unless there are further
23 resolutions, this case is headed toward an epic confirmation
24 fight. Debtors choice of which fights to have is due some
25 deference. Ultimately, whether any plan is confirmable is my

1 decision.

2 With the two exceptions I'm about to discuss, I
3 conclude that Debtors have met the standard under Section 363
4 for approval of the RSA.

5 I'll turn to the coalition fees. While the RSA is
6 in effect, Debtors agree to pay on a go-forward basis the
7 "reasonable, documented, and contractual" fees and expenses
8 of the coalition's professionals on a monthly basis. On the
9 effective date of a plan, Debtors are to either reimburse
10 State Court counsel for amounts they have already paid to the
11 coalition's professionals or pay directly to those
12 professionals amounts that are owed by State Court counsel up
13 to \$10.5 million.

14 Amounts otherwise payable in excess of that cap
15 are to be paid by the settlement trust after the effective
16 date. By a revised proposed form of order, Debtors have made
17 these payments subject to procedures for estate professionals
18 with respect to interim compensation, and there are other
19 restrictions on the scope of services that can be
20 compensated.

21 I agree with Judge Dorsey's recent analysis of the
22 363.503 issue in Mallinckrodt. Debtors can use Section 363
23 as a vehicle to bring a request to pay fees of a creditor
24 while a creditor's request is properly brought under Section
25 503(b). But in either event, the standard to apply is a 503

1 standard, the requirement to find a substantial contribution.

2 Here, I have several concerns that cause me to
3 deny the request at this point in time. First, the
4 coalition's members are abuse victims, the very same
5 constituency that the Official Committee of Tort Claimants
6 represents. The logical question is whether services are
7 being duplicated.

8 While coalition counsel argues that there is now
9 consideration between the coalition, the official committee,
10 and the FCR, something that I can see in the filings before
11 me, that does not ensure lack of duplication.

12 Second, in connection with the Rule 2019 motion
13 directed at the coalition and its request to become a
14 mediation party, there was much discussion regarding how the
15 coalition would work and who would pay for it. I have
16 reviewed the coalition's filing, Docket Item 1429, and it
17 states in bold print, "Coalition counsel are being paid by
18 State Court counsel. Coalition members will not in any way
19 be responsible for the fees of coalition counsel."

20 The cost of the coalition's professionals was to
21 be borne by the State Court counsel who formed the coalition,
22 not their clients. Payment by Boy Scouts and certainly any
23 payment by the investor trust comes directly or indirectly
24 out of their client's pockets and, indeed, the pockets of all
25 abuse victims. While one can argue that on a relative scale

1 that's not that great, any funds diverted from abuse victims,
2 especially to pay an obligation of their lawyers,
3 needs to be closely examined.

4 Third, it needs to be clear that the coalition is
5 making a substantial contribution.

6 Debtor's testimony is that the benefit to having
7 the coalition at the table is that State Court counsel
8 represent in excess of 60,000 abuse victims. Debtors can,
9 therefore, negotiate with a single entity, the coalition and
10 its State Law counsel, rather than numerous counsel to abuse
11 victims.

12 Further, as evidenced by the RSA itself and the
13 obligations of the State Court counsel, the belief is that
14 their clients will vote in favor of a plan. But that has yet
15 to occur.

16 Further, the RSA provides the coalition with
17 numerous termination rights, many of which are subjective.
18 In the circumstances of this case, I think it is necessary to
19 see the outcome of the coalition's efforts. I also note that
20 because of invocation of mediation privilege, there was no
21 evidence on the role of the coalition played in the mediation
22 and in the RSA.

23 Now I turn to the Hartford objection.

24 Debtors and Hartford executed a settlement and
25 release agreement on April 15, 2021. It was filed on the

1 docket on April 16 as an exhibit to the second mediator's
2 report. In the agreement, Hartford and BSA agreed to
3 Hartford's buy-back of its insurance policies for \$650
4 million as adjusted, releases, and mutual cooperation.

5 There are two options for presenting the
6 settlement to the Court at Hartford's election. First,
7 approval can be obtained through an order confirming a plan
8 of reorganization containing the Hartford settlement.

9 Second, at any time on 20 days' notice, Hartford
10 can request that BSA file a motion with the Court seeking
11 approval under Section 363 and Rule 9019.

12 There's no evidence in the record that Hartford
13 made a request for BSA to bring a 363 motion, nor has
14 Hartford filed a motion to -- nor has Hartford filed a motion
15 to enforce the settlement agreement or compelled BSA to file
16 the settlement motion. Rather, BSA filed a second amended
17 plan, which contains both the Hartford settlement and so-
18 called toggle option.

19 BSA also filed a disclosure statement that was
20 scheduled to be considered for approval on May 19 as part of
21 a very long calendar. After a full-day hearing on other
22 motions, incident exclusivity, derivative standing to sue
23 JPM, and the estimation motion, any remaining motions,
24 including the motion to approve the disclosure statement,
25 were adjourned until the following Monday, May 25.

1 The hearing did not resume on May 25; rather, I
2 was asked to adjourn the hearing so the mediation sessions
3 could continue. My recollection is that the Tort Claimants
4 Committee objected, but I determined to honor the request
5 that parties go to mediation. My recollection is that there
6 were further adjournments after that. Since parties were in
7 mediation, I did not rule on the motions that had been argued
8 on May 19 at that time. Or I didn't rule at that time or
9 subsequently because they were in mediation. And because the
10 motions were interconnected, I was considering them together.

11 The disclosure statement related to the plan based
12 on the Hartford Settlement did not continue. Sorry, the
13 hearing on the disclosure statement.

14 Related to the plan based on the Hartford
15 Settlement did not continue. Rather on July 1, Debtor filed
16 their motion to approve RSA and related plan and disclosure
17 statement. In the RSA, Debtors seek authorization to enter
18 into and perform under the RSA. And they also seek a finding
19 and conclusion that "Debtors shall have no obligation to seek
20 approval of and have no obligations under the Hartford
21 settlement." Debtors acknowledge in their required read that
22 the RSA and the Hartford Settlement are mutually exclusive.
23 Hartford has objected to the motion and the requested
24 findings and conclusions in the proposed form of order on two
25 grounds.

1 First, it argues that any relief must be sought in
2 an adversary procedure. Second, it argues that Debtors
3 cannot repudiate the Hartford Agreement because the
4 obligation is to seek approval of the agreement as currently
5 binding on Debtors. Hartford draws a distinction between
6 Debtor's obligation to seek approval under the agreement and
7 Debtor's obligation to consummate the agreement which
8 Hartford agrees Debtors cannot do until the Court approves
9 the settlement. Hartford argues Debtors conflate the two
10 concepts.

11 In its reply brief, Debtors acknowledge that
12 there's not a consensus on the issue of whether a settlement
13 agreement is enforceable before it has been approved by the
14 Court. The Debtors argue that the better reasoned view is
15 that it is not. Even so, Debtors contend that they have
16 complied with their affirmative obligations under the
17 Hartford settlement agreement to the extent possible.

18 Debtors have also incorporated the Hartford
19 Settlement into the fourth amended plan. But now they say
20 they need guidance from the Court due to change
21 circumstances.

22 The Debtors argue that the existence of the RSA
23 now creates conflicting duties, a duty to Hartford under the
24 Hartford settlement agreement and its fiduciary duty to all
25 other creditors. At argument, Debtors took an entirely new

1 position. They argued that by its terms, the Hartford
2 Agreement is not currently effective and that none of its
3 provisions, save one perhaps, are currently operable because
4 conditions precedent to effectiveness have not been met.

5 The coalition, FCR, and TCC filed a joint reply to
6 Hartford's argument. They, too, contend that circumstances
7 have changed and "as evidenced by the motion itself" it is
8 clear that the plan is no longer commensurate with Debtor's
9 fiduciary duties. They argue that there is now an agreement
10 with broad creditor support, and if Debtors pursue the
11 Hartford agreement, the RSA will be extinguished, and the
12 survivor groups will oppose the Hartford settlement
13 and vote down any plan incorporating it.

14 The coalition, FCR, and TCC emphasize that with
15 respect to Debtor -- Debtor's obligations under the Hartford
16 agreement "the determining factor is the ability of the Court
17 to find that a settlement is in the best interest of
18 creditors" and that Debtor's should not be forced to solicit
19 a plan where the Court's ability to make the requisite
20 findings for settlement are impaired.

21 Having reviewed the posture of the cases cited by
22 all parties, I conclude that the issue of Debtor's
23 obligations, if any, is not properly before me. Not one case
24 is in the instant posture. What is before me is the entry
25 into the RSA. A Restructuring Support Agreement memorializes

1 the material terms of a restructuring plan that one or more
2 parties have agreed to. It provides that the RSA parties
3 will support the implementation of the plan embodied in it.

4 It is not a vehicle by which the RSA parties can
5 append other requests. In other words, you can't just roll
6 up any relief you want and put it a request to approve on
7 RSA.

8 What the RSA parties have done here is just that.
9 They seek a ruling or guidance that Debtors have no
10 obligations under another document, the Hartford Settlement
11 Agreement, which is not before me. Further, Hartford has not
12 put its agreement before me. Hartford does not argue that
13 Debtors are forbidden to enter into the RSA by the terms of
14 the Hartford agreement. Hartford has not moved to compel
15 compliance with the Hartford -- Hartford Agreement.

16 And Hartford is not asking me to force the Debtors
17 to solicit any plan. Rather, Hartford simply argues that I
18 cannot rule on the Hartford Agreement in this context, and to
19 the extent I can, Hartford argues that the finding and
20 conclusions the RSA parties seek are incorrect.

21 While I do not think that the issue of Debtor's
22 obligations under the Hartford agreement necessarily need to
23 be decided in an adversary proceeding, it's clear the RSA
24 motion is not the proper vehicle. One, the import of the
25 rulings that the RSA parties seek is that Hartford can have

1 no claim against Debtors. But Hartford has not filed the
2 claim, administrative or otherwise, based on Debtor's breach
3 of the Hartford agreement. I have no context to make a
4 determination of whether any damages Hartford may seek are
5 appropriate.

6 Two, if Hartford's position is correct that
7 Debtors have an obligation to seek approval of the agreement,
8 Debtors may yet be able to perform.

9 Assuming Debtors will not seek approval in a plan,
10 Hartford can make a request that Debtors file a 363 motion.
11 Whether that request is made and whether Debtors comply with
12 any such request could either moot the issue entirely or
13 impact on any claimed damages.

14 Three, Hartford has not placed the merits of the
15 Hartford settlement agreement in front of me nor have the
16 Debtors. In fact, the coalition, the TCC, and FCR filed a
17 motion in limine to preclude any evidence regarding the
18 reasonableness of the Hartford Settlement. So their argument
19 that I can find that it is not in all parties' best interest
20 to solicit a plan containing the Hartford Settlement cannot
21 be made, even if it were appropriate to do so. And, of
22 course, many objectors find fault with the plan embodied in
23 the RSA.

24 Four, Hartford has not made a motion to compel
25 compliance with or enforce the Hartford agreement. Five,

1 Debtors raised for the first time at argument that the
2 Hartford agreement is not affected by its terms, that issue
3 therefore was unfairly raised, and it's another reason not to
4 consider the argument now. It may also require evidence.
5 All of this is to say that the request to determine Debtor's
6 obligations -- are conversely Hartford's damages -- is not
7 appropriate in this context.

8 My conclusion: I have found that the entry into
9 the RSA is a sound exercise of Debtor's business judgment.
10 The parties can proceed with the RSA without the findings
11 regarding the Hartford settlement agreement and fees for the
12 coalition, or not. And, of course, Debtors can file any plan
13 they choose. If there are consequences, they will be
14 addressed in a proper context. If the RSA parties determine
15 they want to proceed under these circumstances, I do have a
16 question on the form of order.

17 Paragraph E, as in Edward, has me make findings
18 with respect to the non-Debtor parties. I question if I can
19 do that and why I need to. I have no evidence on others'
20 ability to enter into the RSA or whether they are legally
21 authorized to do so. So I do not know the import of this
22 paragraph *vis-a-vis* anyone other than the Debtors. I also
23 recall that Mr. Bookbinder may have objections to certain
24 provisions in the order. So please consult with
25 Mr. Bookbinder and ask chambers to set up a further hearing

1 to discuss the order, if necessary, if the RSA parties
2 determine to go forward, notwithstanding my ruling.

3 Let me emphasize the limited nature of my ruling
4 today. I am being asked to approve Debtor's entry into the
5 RSA. I am not approving the term sheet, the fourth amended
6 plan, any disclosure statement, or anything else, and the
7 order I entered today does not suggest that I will do so or
8 need to do so.

9 As Judge Glenn said in his decision in, In re:
10 Residential Capital, LCC, 2013 Westlaw 328-619(a), Bankruptcy
11 Court Southern District of New York, 2013, this decision
12 interlocutory. So that concludes my ruling.

13 Again, I apologize for the length and that you had
14 to sit there. I hope it was clear enough. I realize
15 things -- I realize verbal decisions are often hard to
16 follow, but I've noted that parties have been getting
17 transcripts rather quickly. Also, if -- when I read the
18 transcript I determine that I should put my bench ruling on
19 the docket, I will -- I will do so.

20 That is all I have for today. I note that we are
21 back here Wednesday. I've got it down as an omnibus. But I
22 also have it written down as the disclosure statement
23 hearing. I guess what I will need to know, what all -- all
24 parties will need to know as soon as possible is whether, in
25 fact, the Debtor intends to go forward, given my ruling on

1 the RSA. So I think it would help if you put something on
2 the docket with respect to that -- with respect to that.

3 MS. LAURIA: Your Honor, this is Jessica Lauria.

4 We obviously in the circle of internally, thank
5 you for your ruling and thank you for ruling so quickly.

6 With respect to the RSA, I'm sure that was a
7 monumental task that we're having three days of hearing in
8 the volume of documents but we very much appreciate that. We
9 will circle up and then we will get back to the Court ASAP
10 and other parties.

11 THE COURT: Thank you very much then we are
12 adjourned.

13 COUNSEL: Thank you, Your Honor.

14 (Proceedings concluded at 3:50 p.m.)
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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ Wendy Sawyer

August 19, 2021

Wendy Sawyer, CDLT
Certified Court Transcriptionist
For Reliable